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NOT TO BE PUBLISHED IN OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION ONE

PAUL LACOURCIERE, Appellant, v. MICHELLE LACOURCIERE, Respondent.	A154399 (San Mateo County Super. Ct. No. 17FAM00553)

Paul Lacourciere appeals from an order and judgment entered in dissolution proceedings with his former wife, Michelle Lacourciere.[1] The sole issue on appeal is the trial court's characterization of a home in Pacifica that was purchased shortly before the marriage and was shared during the marriage. The court found that the property was a community asset. We affirm.

I.
FACTUAL AND PROCEDURAL BACKGROUND

Paul and Michelle were married in February 2003, and they have two children together. They separated in early 2017. Before getting married, they leased their residence in Pacifica and exercised an option to buy it. They both signed the purchase contract, and they both claimed to have contributed funds towards the down payment.

[1] As is customary, we will refer to the parties by their first names since they share the same surname.

The purchase involved a sizeable mortgage. The property was deeded in Paul's name, but shortly after the purchase Paul executed a grant deed transferring title to himself and Michelle "as joint tenants" (the grant deed). This grant deed, however, was never recorded.

In December 2004, during the parties' marriage, the mortgage on the home was refinanced. As part of the refinancing process and at Paul's request, Michelle signed an interspousal transfer deed, which purported to convey her interest in the property to Paul.

After a hearing at which both Paul and Michelle testified, the trial court ruled that the property was a community asset. In doing so, the court found that the grant deed was valid and the interspousal deed was not. The court ordered the home sold, but it stayed the sale pending an appeal. Judgment was entered on April 17, 2018.

II.
DISCUSSION

A. The Standard of Review.

We presume the correctness of the trial court's orders and indulge all intendments and presumptions to support them on matters as to which the record is silent. (*Denham v. Superior Court* (1970) 2 Cal.3d 557, 564.) The party appealing from an order has the burden to affirmatively show error. (*Id*. at p. 566.)

"Appellate review of a trial court's finding that a particular item is separate or community property is limited to a determination of whether any substantial evidence supports the finding." (*In re Marriage of Dekker* (1993) 17 Cal.App.4th 842, 849; see also *In re Marriage of Cochran* (2001) 87 Cal.App.4th 1050, 1057-1058 ["Whether the spouse claiming a separate property interest has adequately met his or her burden of tracing to a separate property source is a question of fact and the trial court's holding on the matter must be upheld if supported by substantial evidence"].) De novo review, however, is appropriate where resolution of "the issue of the characterization to be given (as separate or community property) . . . requires a critical consideration, in a factual context, of legal principles and their underlying values, [so that] the determination in question amounts to the resolution of a mixed question of law and fact that is

predominantly one of law." (*In re Marriage of Davis* (2004) 120 Cal.App.4th 1007, 1015.)

B. Substantial Evidence Supports the Trial Court's Characterization of the Home as a Community Asset.

Paul's sole contention on appeal is that the home is his separate property because it is titled in his name alone. He argues that the grant deed was ineffective because he had "no intent to transfer title" to Michelle and "did not surrender control over the deed."[2] We are not persuaded.

"In a marital dissolution proceeding, a court's characterization of the parties' property—as community property or separate property—determines the division of the property between the spouses." (*In re Marriage of Valli* (2014) 58 Cal.4th 1396, 1399.) "Generally speaking, property characterization depends on three factors: (1) the time of acquisition; (2) the 'operation of various presumptions, particularly those concerning the form of title'; and (3) the determination 'whether the spouses have transmuted' the property in question, thereby changing its character.' [Citation.] In some cases, a fourth factor may be involved: whether the parties' actions short of formal transmutation have converted the property's character, as by commingling to the extent that tracing is impossible." (*In re Marriage of Rossin* (2009) 172 Cal.App.4th 725, 732.)

"In general, '[a]ppellate review of a trial court's finding that a particular item is separate or community property is limited to a determination of whether any substantial evidence supports the finding.' " (*In re Marriage of Bonvino* (2015) 241 Cal.App.4th 1411, 1421.) Under the substantial evidence standard, we defer to the trial court's determination on the weight and credibility of the evidence and also its resolution of any conflicts in the evidence. (See, e.g., *In re T.W.* (2013) 214 Cal.App.4th 1154, 1162.) It is

[2] Paul does *not* pursue on appeal an argument that the property was a community asset, which was transmuted to his separate property by virtue of the interspousal deed. Instead, he argues that since Michelle "never received title to the House, the Interspousal Transfer Deed did not operate to deprive [her] of title." We therefore do not further discuss the interspousal deed or its potential legal consequence.

irrelevant that a different conclusion could have been reached on the same evidence. (*Rupf v. Yan* (2000) 85 Cal.App.4th 411, 429-430, fn. 5 [" 'So long as there is "substantial evidence," the appellate court *must affirm* . . . even if the reviewing justices personally would have ruled differently had they presided over the proceedings below, and even if other substantial evidence would have supported a different result' "].)

The record here reflects ample, and certainly substantial, evidence supporting the trial court's finding that the property was a community asset. To begin with, the grant deed itself is substantial evidence supporting the finding. And, if that were not enough, plenty of additional evidence supports the finding. Evidence was presented that both parties signed the option to purchase the home, signed the purchase contract, and contributed to the down payment and cost of home repairs. And it was undisputed Paul signed the grant deed in the presence of a notary and gave it to Michelle, telling her to keep it in a safe place. Michelle testified that she always believed she was a joint owner of the home, and on the basis of this belief borrowed money from her father at one point to pay off arrears in the mortgage to avoid a foreclosure.

It is true Paul testified that he did not intend for the grant deed to transfer title, and that he gave the deed to Michelle to be filed in the event of his death to protect her and her son "[o]ut of compassion for [them]." But the trial court did not find his testimony to be credible. As we have said, we must defer to the trial court on its evaluation of the weight and credibility of the evidence. (*In re T.W.*, *supra*, 214 Cal.App.4th at p. 1162.) All told, there is more than enough evidence in the record to support the trial court's determinations that the grant deed was valid and that the home is a community asset.

Finally, we are puzzled by Paul's single-minded focus on the law governing non-marital transfers of real estate. To begin with, this focus ignores governing community-property principles. Furthermore, even if we were to conclude that the grant deed was ineffective (and that the property was therefore Paul's separate property), Michelle would appear to still be entitled to a substantial portion of the property's value. This is because a calculation would be required under the *Moore/Marsden* rule, which provides that the community acquires a pro tanto interest in separate real estate when, during the marriage,

community funds are used to pay down the mortgage. (See *In re Marriage of Moore* (1980) 28 Cal.3d 366, 371-372; *In re Marriage of Marsden* (1982) 130 Cal.App.3d 426, 436-440.) Evidence was presented that both parties contributed to the down payment and paid for home improvements, and that community funds, i.e., money from Paul's earnings, were used to pay the mortgage during the marriage. Thus, even if the property were to be considered Paul's separate property, the community's pro tanto interest appears to be most, if not all, of the home's value, and Michelle would be entitled to share equally in this interest. (Family Code, § 2550.)

III.
DISPOSITION

The judgment is affirmed. Michelle is awarded her costs, but her request for attorney fees is denied.

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Humes, P.J.

We concur:

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Margulies, J.

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Sanchez, J.